

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(FCC Triennial Review
Nine-Month Phase)**

**ADMINISTRATIVE LAW JUDGE'S RULING
REVISING THE PROCEDURAL SCHEDULE**

This ruling is issued to revise the procedural schedule in response to concerns raised by several parties in a teleconference call on January 7, 2003, and also to direct parties to provide additional information in anticipation of the prehearing conference (PHC) scheduled for January 20, 2004.

Pursuant to that teleconference, counsel for AT&T and MCI advised the Administrative Law Judge (ALJ) that delays in their receipt of all discovery and resolving discovery disputes with the incumbent local exchange carriers (ILECs) were creating difficulties in their completion of mass market switching reply testimony by the January 9th due date. Various other parties indicated that they were likewise impacted by these schedule delays to the extent they were relying on receipt of the same data sought by MCI and AT&T. Accordingly, MCI and AT&T informally requested an extension in the due date for reply testimony on mass market switching issues to accommodate the delays in receipt of essential

discovery. MCI and AT&T proposed a one-week extension in the January 9th due date for reply testimony, with related adjustments in the schedule for hearings and briefing, as follows:

Item	Current	Due Date Proposed
Reply testimony: mass market switching	January 9, 2004	January 16, 2004
Evidentiary Hearings	January 26, 2004	February 2, 2004
Opening Briefs		March 11 or March 12, 2004
Reply Briefs		March 25 or March 26, 2004

Adopted Schedule Adjustments

By this ruling, the schedule is adjusted to accommodate parties' request for an extension in the due date for mass market switching reply testimony, together with other concurrent adjustments to minimize the risk of overall schedule delay, as explained below.

The requested one-week extension in the January 9th due date for reply testimony shall be granted. Reply testimony on mass market switching shall thus be due on January 16, 2004. Instead of delaying the overall starting of evidentiary hearings by one week, as parties propose, however, the starting date for hearings schedule shall remain January 26th. To accommodate parties' one-week delay in receipt of reply testimony on switching issues, however, the scheduling of witness cross-examination specifically on mass market switching testimony shall be set to begin no sooner than February 2nd.

To preserve the hearing time previously scheduled to begin on January 26th, the previously anticipated order of hearing issues shall be re-sequenced. Previously, hearings on loop/transport and batch cut issues were

to follow mass market switching. To accommodate the delay in mass market switching reply testimony schedule, however, as adopted above, the sequence of witnesses scheduled to give oral testimony shall be revised such that ILEC witnesses on loop/transport and batch cut issues go first in order for cross-examination, to begin on January 26, 2004.

Thus, the week beginning Monday, January 26, 2004, shall be reserved for the commencement of the ILEC witnesses on loop/transport issues, to be followed by ILEC witnesses on batch cut issues. As explained in the companion ruling being issued today on the ILEC motions for reconsideration of the December 15, 2003 ALJ Ruling, the scope of ILEC witnesses' oral testimony and cross examination on loop/transport issues during the week of January 26, 2004 shall be limited to the scope of testimony permitted in the ALJ ruling dated December 15, 2003. Thus, oral testimony and cross examination relating to the additional loop/transport data in supplemental testimony that is permitted pursuant to the companion ruling issuing today shall be scheduled to occur later in the evidentiary schedule to provide sufficient time for parties to prepare cross-examination. The specific timing will be discussed further at the PHC.

Following the completion of the ILEC witnesses oral testimony on loop/transport (other than new supplemental data) and batch cuts, the hearing schedule shall continue with presentation of ILEC witnesses on mass market switching issues, (beginning, however, no sooner than February 2nd). Following next in sequence, parties' witnesses other than ILECs on mass market switching issues shall take the stand to testify. The subsequent schedule for remaining witnesses' oral testimony on issues in the nine-month proceeding shall be addressed further at the PHC on January 20th.

The ILEC parties shall make arrangements with their witnesses to be available to appear for oral testimony in accordance with schedule adopted for their appearance, and shall advise the ALJ of any witness availability difficulties as soon as possible.

In an e-mail to the ALJ, SBC raised the concern that the proposed change in the schedule gives only two working days (between January 21 and January 26) for the loop and transport witnesses to review the CLEC loop and transport reply testimony. The cross-examination, however, will be directed towards the ILEC witness' testimony, but not the reply testimony of other parties. The ILECs will be given appropriate time to prepare for the cross examination of opposing witnesses' reply testimony on mass market switching (and other issues) later in the hearing schedule.

The ILECs have already provided preliminary information to the ALJ concerning witness availability and constraints to appear for cross-examination. This information will be utilized to finalize the order of witnesses' appearances. The schedule for the appearance of witnesses shall be further discussed and finalized at the PHC scheduled for January 20, 2004. The briefing schedule shall also be discussed further at the PHC. Parties will be provided the opportunity at the PHC to identify or address any other procedural issues relevant to the proceeding and the efficient conduct of evidentiary hearings.

Estimates of Cross-Examination Time

As an additional planning tool, parties seeking to conduct cross examination are directed to inform the ALJ and to provide their best estimates of expected cross-examination time for each witness that has mailed testimony so far. Parties with common interests are urged to confer and coordinate their planned estimates of cross-examination to avoid duplication in expected time

planned for each counsel's cross-examination. Parties' estimates of cross-examination shall be reported separately for witnesses sponsoring testimony on: (1) mass market switching, (2) loops/transport, and (3) batch cut processes. Parties shall indicate cross-examination estimates informally by electronic mail to the ALJ by January 15, 2004.

Schedule for Filing Any Motions to Strike

To the extent that any party may intend to file a motion to strike any testimony or other exhibit, or portion thereof, that has been mailed up to the present time, the party shall file such motion no later than January 15, 2004. Any motion to strike shall specifically identify the actual text and/or other pertinent material in an exhibit that is proposed to be stricken, together with supporting rationale.

Settlements, Admissions, and Stipulations

Parties are encouraged to continue seeking areas for possible stipulation or admission of facts and areas of agreement to narrow disputed issues and to limit the extent of cross-examination.

IT IS RULED that the schedule for testimony, witness order, estimates of cross-examination, and filing of any motions to strike is revised in the manner as discussed above.

Dated January 12, 2004, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and e-mail this day served a true copy of the original attached Administrative Law Judge's Ruling Revising the Procedural Schedule on all parties of record in this proceeding or their attorneys of record.

Dated January 12, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.